

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

Blue Spike, LLC,

*Plaintiff,*

V.

Texas Instruments, Inc. et al.,

*Defendants.*



Case No. 6:12-cv-499-MHS

## Lead Case

## Jury Trial Demanded

## PLAINTIFF'S MOTION TO COMPEL INSPECTION OF DEFENDANT FUTRONIC'S SOURCE CODE

Plaintiff Blue Spike LLC respectfully moves this Court pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule CV-7 to compel Defendant Futronic Technology Co. Ltd. (“Futronic”) to produce for inspection all source code pertaining to the accused products in this lawsuit.<sup>1</sup>

Futronic—a company based in Hong Kong that sells accused products over the Internet and through direct retailers in the United States—has taken the position that it is not required to comply with the discovery obligations

<sup>1</sup> In its April 24, 2014, Amended Answer, Affirmative Defenses, and Counterclaims to Blue Spike LLC's First Amended Complaint for Patent Infringement (Dkt. 1482), Futronic admits in Paragraph 28 that it is the maker of the accused products in this patent infringement lawsuit. See Dkt. 1482 ("Futronic admits that it has products called Software Development Kits (SDKs) (such as ANSI/ISO Windows, Linux, and MacOS SDKs); Fingerprint Authentication Server (FAS); FS84C PIV Ethernet Fingerprint Authentication Module (eFAM); FS83C PIV serial Fingerprint Authentication Module (sFAM); FS28 Fingerprint Scanner; FS80, FS88, and FS89 Fingerprint Scanners (in conjunction with ANSI/ISO, Windows, or Linux SDKs); FS82 Fingerprint Smart Card Reader (in conjunction with Windows, Linux, or MacOS SDKs); FS25 Fingerprint Mifare Card Reader/Writer (in conjunction with FAS or Linux SDK); FS21M Fin'Lock and FS22 Fin'Lock; ScanAPI for Citrix; ScanAPI for RemoteDesktop; Finlogon Personal Edition (PE); Finlogon Enterprise Edition (EE); Finlogon Add-on Pack (in conjunction with Finlogon PE or Finlogon EE); and FS20, FS50, FS51, FS52, FS53, FS60, FS81, and FS90 (in conjunction with SDK).").

entered by this court on March 6, 2014, Dkt. No. 1332 and Patent Local Rules 3-4 by producing for inspection its source code for review. Futronic's position further complicates the progression of this case by the fact that Futronic has asserted four (4) counterclaims against Blue Spike indicating that Futronic does not infringe the patents-in-suit after admitting that it sells the accused products at issue. (*Compare* Dkt. 1482 ¶ 28 *with* Dkt. 1482 ¶¶ 6, 13, 20, 27; *see also* [http://www.futronic-tech.com/product\\_fs80.html](http://www.futronic-tech.com/product_fs80.html) as visited on June 10, 2014.) Blue Spike cannot proceed with this litigation and cannot defend itself against those counterclaims without review of the Defendant's source code related to the accused products.

Futronic refuses to make its source code available for inspection to Blue Spike. On April 28, 2014, Futronic indicated that it needed clarity on what "types" of source code Blue Spike was requesting. *See* Ex. 1. Blue Spike explained in detail on May 9, 2014. *See id.* After additional failed attempts to obtain and confirm dates to inspect source code under the provisions of the Protective Order agreed to by the parties, the parties met and conferred on June 9 and 10, 2014, pursuant to Local Rule CV-7(h), at which point Futronic made it clear that it would not make its source code or any supporting documents available for review.

As a last resort, Blue Spike now files this motion to compel the Court to Order Futronic to produce for inspection current source code for the accused products identified in Plaintiff's First Amended Complaint, Dkt. No. 1482.

Respectfully submitted,

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### **Certificate of Service**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on June 10, 2014.

/s/ Randall Garteiser

### **Certificate of Conference**

Pursuant to Local Rule CV-7(h), the undersigned certifies that lead counsel for both parties met and conferred on June 9 and 10, 2014 in an effort to reach a resolution. Unfortunately, after attempting in good faith to resolve their differences, the parties were not able to reach a resolution. Counsel for Futronic made it clear that Futronic would not make its source code or any other supporting discovery documents available for review.

/s/ Randall Garteiser

/s/ Christopher Honea